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Office of Administrative Counsel
PO Box 30052
Lansing, MI 48909
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Re: ADM File No. 2015-27
Comments on Proposed MIDC Standards

Ladies and Gentlemen:

I have several grave concerns regarding the proposed MIDC standards. I have shared my concerns with the MIDC committee, met with my local MIDC consultant and attended (by video) a presentation by Mr. Sachs. It appears to me that no one is listening to those of us who are in the trenches every day dealing with the practical aspects of indigent defense at the trial level. I have been a criminal defense attorney for more than a quarter of a century and I am passionate about what I do and the people I help. I spend as much time as is necessary to effectively and compassionately represent my clients. I regularly attend several criminal law seminars each year and do my very best to keep abreast of changes in the law and forensic issues.

I have thoroughly reviewed the MIDC Act, the proposed standards, and the staff comments thereto, none of which *mandate* the provision of additional resources to *directly* assist defense counsel in complying with these nearly impossible expectations (who "knows" all substantive Michigan and federal law? See Standard 1 A.). Nor is any protection afforded to indigent defense counsel to ameliorate the added risk of grievances that are sure to follow should these standards be adopted. Some specific concerns follow.

Requiring an initial interview within three business days of appointment in most cases does not and will not pose a problem, but in others it will be virtually impossible to meet this standard. In Grand Traverse County, we are regularly appointed to represent MDOC prisoners who are alleged to have committed offenses while housed at Pugsley Correctional Facility, which is in Grand Traverse County but nearly 25 miles from the courthouse. Worse yet, some of these clients are transferred to other MDOC facilities several counties and hours away. Who is going to pay for counsel to drive several hours to see a client who is housed with MDOC, even if counsel could manage to get there in three days? (**Standard 2 A.**) Will clients who are housed out of county or at Pugsley be made available to counsel via Polycom or other means? And, if

so, will this satisfy the mandate? Thus far, MDOC personnel have REFUSED to cooperate with this writer in her attempts to communicate with clients in such a fashion, and I do not envision them doing so in the future (especially within three days) *unless mandated by law*. Likewise, clients charged in one county may already be lodged in another county on different charges. How is counsel supposed to meet with these clients? Of course, they are arraigned by video for the court's convenience and the convenience of law enforcement, but what accommodation is going to be made for counsel to meet with out-of-county clients? The failure to include provisions to address these very real issues and MANDATE the provision of accommodation for defense counsel in these situations is short-sighted and irresponsible. Standard 2 A. sets up defense counsel for a grievance from the onset of representation. Already I have had a couple of clients refer to what they call "the three day rule."

At times I must wait up to thirty minutes to visit with clients at the local jail. Then, jail staff will sweep clients out of the courtroom immediately after hearings without "allowing" counsel to speak to his or her client. Their reply upon objection? "You can see him at the jail". Further, how exactly does the MIDC expect counsel to "ensure the necessary accommodations for private discussions . . . in courthouses, lock-ups" etc. (**Standard 2 B.**) Defense attorneys have no power or control in those settings. A couple of years ago, I personally experienced insulting, degrading comments by an unprofessional, uncooperative MDOC employee when I was insisting that I needed to have a private polycom conference or at least telephone call with a client to review a presentence report prior to the day of his sentencing. She referred to "lazy defense attorneys who don't want to do their jobs". My client was incarcerated *two hours* away and I was making every reasonable attempt to do my job and to do it well. Fortunately, the 13th Circuit Court judges stepped in and assisted me with the issue.

The point of these anecdotes is that it is easy to propose and adopt new minimum standards for defense counsel, but unless *everyone* involved in the criminal justice system has new standards that they "must" or "shall" follow, the ultimate goal of the MIDC Act will not be realized. Without reforms across the board and the provision of resources for counsel, the only change we will see is an increase in the number of grievances filed against indigent defense counsel who fail to, for example, have the first client meeting within three business days. While MCL 780.1003(5) provides that "[v]iolations of MIDC rules that do not constitute ineffective assistance of counsel under the United States constitution or the state constitution of 1963 do not constitute grounds for a conviction to be reversed or a judgment to be modified for ineffective assistance of counsel", it is interesting to note that *nowhere does the Act offer any protection against grievances* filed for an attorney's "technical" violation of the Act where the client was otherwise appropriately and effectively represented.

I appreciate your time and consideration of my comments.

Respectfully yours,

/s/ Janet M. Mistele

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